

# HOUSE BILL REPORT

## SHB 1051

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### As Amended by the Senate

**Title:** An act relating to trusts and estates.

**Brief Description:** Amending trusts and estates statutes.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Pedersen, Rodne, Eddy, Goodman, Kelley and Moeller; by request of Washington State Bar Association).

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 1/13/11, 1/20/11 [DPS].

##### **Floor Activity:**

Passed House: 3/1/11, 98-0.

Senate Amended.

Passed Senate: 4/6/11, 48-0.

#### **Brief Summary of Substitute Bill**

- Adopts changes to trust and estate law recommended by the Washington State Bar Association, including: (1) modifying the method for determining a trust situs and venue for proceedings; (2) requiring notice by trustees to beneficiaries; (3) allowing the courts to reform mistakes in trust documents; (4) making noncharitable trusts without ascertainable beneficiaries enforceable; and (5) codifying pre-existing common law.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Frockt, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

**Staff:** Kelly Pfundheller (786-7289).

#### **Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Trusts are a means of transferring property. A trust is created by a trustor, who gives their property to a trustee. The trustee holds legal title to the property, but only manages the property for the benefit of other individuals specified by the trustor. The beneficiaries hold equitable title to the property, meaning the beneficiaries enjoy the property, but do not have control over the trustee or how the trustee manages the legal title. Trusts can be made revocable or irrevocable by the trustor. Revocable living trusts are commonly used as an alternative to traditional wills as a way to pass property when you die.

Washington's laws of trusts and estates exist in both statute and common law. Washington statutes govern a range of trust issues, including the authority of trustees, trust administration, distribution of assets, liability issues, and the investment of trust funds. In 1999 the state enacted the Trust and Estate Dispute Resolution Act, which updated and revised the laws on resolving trust disputes.

The National Conference of Commissioners on Uniform State Laws has proposed a Uniform Trust Code (UTC) for the purpose of providing a consistent and integrated framework of rules to deal with trusts. The Washington State Bar Association's Executive Committee of the Real Property, Probate and Trust Section appointed a task force to review the official version of the UTC and Washington's current trust laws. The task force recommends several amendments and additions to Washington's trust laws, including amending current sections and adopting new sections to change current law and adopting new sections to codify preexisting common law.

#### **Summary of Substitute Bill:**

The substitute bill makes changes to many aspects of trust and estate law and codifies many areas of preexisting common law.

#### Trust Situs.

The situs of a trust, or its location, is Washington if the trust instrument designates Washington as the situs and the trust has at least one connection to the state. The possible connections are set forth in the substitute bill. If the trust instrument does not designate Washington as the situs, the trustee may register the trust in the state as long as the trust has a connection to the state. If there is no designation and the trustee does not register the trust, then the trust may qualify as a Washington trust in certain circumstances. This process replaces the current rule that determines the situs by the location of the "principal place of administration of the trust," unless the trust instrument specifies a different location as the situs of the trust.

The transfer of the trust situs is permissible if the new jurisdiction has a connection to the trust. The trustee must provide beneficiaries with 60 days advance notice. If the beneficiaries do not object within that period, the trust situs can be transferred. This replaces the current rule that requires a trustee to obtain the consent of beneficiaries prior to transferring the trust situs.

#### Venue for Proceedings.

Venue for court proceedings is in the county where the beneficiary resides, where the trustee resides or has a place of business, or where the real property of the trust is located. If the trust was created by a will, then venue can be in the county where the will was administered. Venue can be changed by request within four months of a notice of court proceedings. Venue must be changed to the county with the strongest connection to the trust. Currently, venue is determined by the location of the trust situs or of the county where the letters testamentary were granted to a personal representative of an estate subject to a will.

#### Trustee's Duty to Give Notice.

When a trust becomes irrevocable, the trustee must provide notice to all persons with an interest in the trust regarding the existence of the trust and the right to request information as is reasonably necessary to enable the persons to enforce their rights. The trustee must continue to keep all interested persons reasonably informed about the administration of the trust and the material facts necessary for them to protect their interests. The substitute bill sets forth the information to include in the notice. There is no current statutory requirement for trustees to provide notice.

Electronic transmission, or e-mail, is added as an acceptable delivery method for all required notices.

#### Statute of Limitations.

A beneficiary's claims against a trustee for breach of trust must be commenced within three years from the date the beneficiary was sent a report that adequately disclosed the existence of a potential claim and informed the beneficiary of the time allowed for commencing a proceeding. The criteria for providing adequate disclosure are set forth in the substitute bill. If the beneficiary did not receive adequate disclosure, then the proceeding must be commenced within three years from the earlier of: the discharge of the trustee, the termination of the beneficiary's interest in the trust, or the termination of the trust. Currently, proceedings must be commenced within three years from the earlier of: the time the breach was discovered or should have been discovered, the discharge of the trustee, or the time of the termination of the trust.

#### Certification of a Trust.

When a person other than a beneficiary requests information regarding the trust, the trustee may provide the person a certification of trust containing a list of information, which is set forth in the substitute bill.

#### Termination of a Trust.

Before terminating a trust, a trustee may send notice to the beneficiaries of the proposed plan for termination and distribution of the remaining assets. After receiving notice of the plan, the beneficiary has 30 days to object to the distribution.

#### Virtual Representation.

Virtual representation refers to circumstances where an individual can be represented by a decision-making process without the ability to participate. Virtual representation is extended to apply to notice to fiduciaries where the fiduciary estate is the interested party. For example, in matters affecting a trust, the trustee can accept notice on behalf of the trust and its beneficiaries.

#### Damages for Breach.

A trustee who commits a breach of trust is liable for the greater of the amount required to restore the value of the property or the profit the trustee made.

#### Correction of Mistakes.

The courts may change the terms of a trust to conform to the trustor's intent if it is proved by clear, cogent, and convincing evidence that a mistake of fact or law affected both the trustor's intent and the terms of the trust. The courts may also change the terms to conform to the trustor's intent if the parties to a binding nonjudicial agreement agree that there is clear, cogent, and convincing evidence to the same effect. Current law does not allow the courts to correct mistakes in trust instruments.

#### Noncharitable Trusts Without Beneficiaries.

Noncharitable trusts without ascertainable beneficiaries are enforceable as long as there is a valid purpose and the trust complies with the rule against perpetuities. Under current common law, a trust is not enforceable unless there is an ascertainable beneficiary or a charitable purpose.

#### Revocable Living Trusts.

The substitute bill creates a new chapter in the code to supplement trust laws for revocable living trusts. The chapter codifies the common law related to amending or revoking revocable living trusts and the limitations of actions on the validity of a revocable living trust.

A beneficiary may commence judicial proceedings to contest the validity of a revocable living trust within the earlier of: 24 months after the trustor's death or four months after receiving notice of the trust. Current law does not provide a shortened time period for beneficiaries to contest the validity of a revocable living trust.

#### Codifying Areas of Common Law.

The substitute bill codifies and clarifies several other areas of the common law on trusts and estates, including the methods and requirements for creating a trust, trusts in other jurisdictions, the purposes of a trust, oral trusts, trustees' authority and duty of loyalty, the nonliability of third parties acting in good faith, and the cy pres doctrine.

The substitute bill also adds the definitions of trust terms and clarifies references to other sections in the code in order to reflect the changes resulting from the bill.

**EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment specifies that if a trustee mails a notice of a trust's termination and the proposed plan for the distribution of its remaining assets to the beneficiaries, the notice must be sent by certified mail with return receipt requested (rather than just by mail).

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect on January 1, 2012.

**Staff Summary of Public Testimony:**

(In support) The law of trusts is centuries old and was created as a method of avoiding inheritance laws in England. In the late 1990s the Uniform Law Commissioners (Commissioners) began the process of creating a code that would update trust law and provide for uniformity amongst the states. After the Commissioners proposed the UTC, the Washington State Bar Association appointed a task force to examine the UTC and Washington's current laws. This bill is the product of the task force's eight years of work.

The bill is not a repeal of Washington law in favor of the UTC. Washington's current statutes work well and were actually a model for the UTC. Instead, the proposed legislation will provide clarity to the law, making the use of trusts economical for the public and the courts. The changes to current statutes, including the new procedure for determining a trust situs and venue for proceedings, will simplify and modernize the law of trusts.

(Opposed) None.

**Persons Testifying:** Representative Pedersen, prime sponsor; Michael Carrico and Karen Boxx, Washington State Bar Association, Real Property Probate Trust Section.

**Persons Signed In To Testify But Not Testifying:** None.